

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 312 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

STATE OF GUJARAT

Versus

GOSAI HARPRASHADGIRI

GANAPATGIRI

Appearance:

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Petitioner

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 04/08/97

ORAL JUDGEMENT

The Respondent accused came to be convicted for the commission of the offence punishable under section 409 and 477A of I.P. Code, and came to be sentenced to the S.I. for two years and to a fine of Rs.500/-, in default to the further S.I. for two months, and to a fine of Rs.500/-; in default to the S.I. for two months, by the Ld. Chief Judicial Magistrate, Amreli, in

Criminal Case No. 406 of 1987. The Criminal Appeal No. 17 of 1988 filed by the present Respondent accused came to be allowed by the Ld. Sessions Judge, Amreli, under his orders dated January 25, 1990. The State being aggrieved by the above said orders of acquittal have come in Appeal before this Court.

The case put forth by the prosecution against the Respondent accused was that, during the period from January 09, 1986 to April 24, 1986, the Respondent accused was working as a Nazir at Civil Court (S.D.) Amreli, and that, an amount of Rs.3587-76 was received by him in the above said capacity for handing over the same to one Smt. Puttu Chinnaya, but that he had not paid the above said amount, and thereby had committed the offence punishable under section 409 and 477A I.P. Code. Ld. Chief Judicial Magistrate was pleased to accept the case of the prosecution on the basis of the fact that, though the amounts came to be received by the Respondent accused, the necessary entries were not posted in the Court record. Move over, according to the Ld. Chief Judicial Magistrate, the whole case came to light when Smt. Puttu Chinnaya, after not having received the amount in time, had made necessary application to the Court. Ld. Sessions Judge was of the opinion that, the entire case of the prosecution falls flat when the reference to the evidence tendered by Smt. Puttu Chinnaya is made.

Upon reading the evidence of Smt. Puttu Chinnaya it appears that she has given a clear go-bye to the case of the prosecution. It is indeed true that the respondent accused had received the amounts after the encashment of the cheques from the bank and that, the necessary entries were not posted in the Court record. But Smt. Puttu Chinnaya in her evidence as Prosecution Witness No.6 at Exhibit-6 had clearly stated that she had received all the amounts in question in time. She has stated that, the application at Exhibit-32 allegedly given by her bears a thumb impression and that, her name is shown against the thumb impression. But when the evidence tendered by her is read in its entirety it becomes clear that, she was entitled to the interest being earned on the deposit in respect of the amounts payable to her in a Workman's compensation case and that, she used to receive the amount regularly and without any break whatsoever. She has also further stated that, she was getting amounts as and when they had become due. She has also said that, she does not know as to who had prepared the application at Exhibit-32 and that, she also does not know as to who had written the name against the

thumb impression in application at Exhibit-32. It was the case of the prosecution that the above said application at Exhibit-32 came to be drafted and prepared by Mr. Muzafar Husain, PW-5, Exhibit-42, a practicing lawyer at Amreli. Mr. Muzafar Husain has said that the above said application is not in his own handwritings and he does not remember as to whether the above said application was prepared in his presence or not. Therefore the application Exhibit-32 allegedly given by Smt. Puttu Chinnaya also becomes doubtful.

Therefore the Ld. Sessions Judge was justified in coming to the conclusion that the entire case of the prosecution was falling flat when Smt. Puttu Chinnaya was saying that, she had received all the due amounts in time without any break or difficulty. In view of this evidence coming from the star prosecution witness, I am not inclined to take a different view than what has been taken by Ld. Sessions Judge. In my opinion, therefore the present Appeal fails and the same requires to be dismissed. I order accordingly. The Judgment of acquittal rendered by the Ld. Sessions Judge, Amreli is hereby confirmed and upheld.

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